IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16126 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HANSABEN W/O. SHANTILAL RANCHHODBHAI KOLI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16126 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

Ms P B Sheth, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 06/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under under Article 226 of the Constitution of India for

appropriate writ, order or direction for quashing and setting aside an order dated 1.11.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that four cases of prohibition under sections 65 and 66 of the Bombay Prohibition Act, 1949 were registered before Navsari police station CR Nos. 1174/03, 1175/03, 1676/03 and 1677/03 and that two witnesses had given statements against the petitioner and, therefore, the petitioner was found to be a bootlegger and hence she was ordered to be detained. The petitioner has challenged the detention order on the ground that the alleged activity would not be treated to be a threat to public order or public health. It has also been contended that the names of the unnamed witnesses who had rendered their statements have not been disclosed to the petitioner and, therefore, the petitioner could not effectively represent her case. Therefore, the order of detention is illegal and deserves to be quashed and set aside.

3. On receipt of the petition, rule was issued and in response to the notice of rule, Ms P B Sheth, learned AGP appears on behalf of the respondents. She produces on record the affidavit of the detaining authority which is taken on record.

3. During the course of hearing, learned Advocate for the petitioner has contended that though four offences under the Bombay Prohibition Act have been registered against the petitioner, it cannot be said that the registration of the said offences amount to a threat to public order or public health. Learned AGP has relied upon a decision of Kanuji Zala v. State of Gujarat, 2000(4) GLR 3256 in order to argue that the registration of prohibition offences would lead to a threat to public health.

5. Again this decision was considered by this Court (Coram: Hon'ble Mr Justice N G Nandi) in Special C.A. No.16542/2003 dated 26.2.2004 wherein it has been clearly laid down that before coming to a finding that the alleged bootlegging activities of the petitioner would lead to a threat to public health, there must be credible material before the detaining authority for coming to the said finding. In the present case, we find that the detaining authority did not have credible materials and, therefore, the order of detention could not have been

passed against the petitioner.

6. Therefore, on the aforesaid strength of registration of four prohibition offences, the petitioner could not be treated to be a bootlegger whose activities were likely to be said to be a threat to public order or public health.

7. So far as the statements of unnamed witnesses are concerned, three witnesses have given statements against the petitioner. It is well settled that before considering the statements of the witnesses, the detaining authority is required to supply names of the said witnesses to the detenu. It is true that under section 9(2) of the Act, the detaining authority has power of privilege to withhold names of the witnesses. However, this Court (Coram: Hon'ble Mr Justice A L Dave) in Special Civil Application No.294/2000 passed on 19.4.2000 clearly laid down that before claiming privilege under section 9(2) of the Act, the detaining authority must have credible material before it in order to ascertain the reasonable fear or apprehension in the mind of the witnesses whose names have not been disclosed to the detenu. It has also been observed that if there is no credible material before the detaining authority, even non-disclosure of the names of the witnesses would violate principles of natural justice and consequently the petitioner's right of making representation under Article 22 (5) of the Constitution of India has been frustrated and hence the order of detention cannot be sustained in the eye of law.

8. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 30.10.2003 passed by respondent No.2 herein be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp